

## DECLARATION & POWER OF ATTORNEY

As a below-named inventor, I hereby declare that:

My correct city and state of residence, my post office address and my citizenship are stated below next to my name.

I believe myself to be the original, first and sole inventor (if only one name is listed below) or an original and first joint inventor (if more than one name is listed below) of the subject matter which is disclosed and claimed and for which a patent is sought on the invention entitled:

### FUNCTIONAL BEVERAGE AND COMPOSITION

The specification of this subject matter:

- is attached hereto.
- was filed on February 4, 2005 as PCT Application No. PCT/JP2005/001700  
was assigned serial No. \_\_\_\_\_;  
which was amended on . \_\_\_\_\_;

I hereby state that I have reviewed and understand the contents of the above-identified patent application, including the claims, as amended by any amendment(s) referred to above. I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with 37 C.F.R. §1.56(a).

I hereby claim foreign priority benefits under 35 U.S.C. §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

<u>PRIOR FOREIGN APPLICATION(S)</u>			<u>Priority Claimed</u>	
Number	Country	Month/Day/Year Filed	Yes	No
2004-030490	Japan	02/06/2004	Yes	No
Number	Country	Month/Day/Year Filed	Yes	No
Number	Country	Month/Day/Year Filed	Yes	No

**PROVISIONAL PATENT APPLICATION(S)**

I hereby claim the benefit under 35 U.S.C. §119(e) of any United States provisional application(s) listed below:

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Application Number	Filing Date
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**PARENT PATENT APPLICATION(S)**

I hereby claim the benefit under 35 U.S.C. §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in these prior United States application(s) in the manner provided by 35 U.S.C. §112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. §1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.

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Application No.	Filing Date	Status (Issued, Pending, Abandoned)
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Application No.	Filing Date	Status (Issued, Pending, Abandoned)
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Application No.	Filing Date	Status (Issued, Pending, Abandoned)
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I hereby appoint David B. Ritchie, Registration No. 31,562; Robert E. Krebs, Registration No. 25,885; Marc S. Hanish, Registration No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne Yeung, Registration No. 44,000; Steven J. Robbins, Registration No. 40,299; Masako Ando, Ltd. Rec. No. L0016; William Samuel Niece, Registration No.: 47,824; Khaled Shami Registration No. 38,745; William E. Winters, Registration No. 42,232, Yukiko Maekawa Registration No. 50,307 and John Klaas Uilkema, Registration No. 20,282; Becky L. Troutman, Registration No. 36,703; Hal J. Bohner, Registration No. 27,856; D. Bommi Bonimannan, Reg. No. 39,452; Theresa Moorman Registration No. 46,941, James Wu, Registration No. 45,241, Suvashis Bhattacharya, Registration No. 46,554 as attorneys of record with full power of substitution and revocation, to prosecute this application and transact all business in the United States Patent and Trademark Office connected therewith. If this application is assigned by me I agree and understand that the above-named attorneys will represent the assignee and not me.

Please send all correspondence and direct all telephone calls to:

David B. Ritchie, Esq.  
Thelen Reid & Priest LLP  
P.O. Box 640640  
San Jose, CA 95164-0640  
Telephone: (408) 292-5800  
Facsimile: (408) 287-8040

I, the undersigned, declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

FULL NAME OF INVENTOR 1 <u>Hiroshi NAGAI</u>	FIRST Name <u>Hiroshi</u>	MIDDLE Initial(s)	LAST Name <u>NAGAI</u>
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RESIDENCE AND CITIZENSHIP	City <u>Ibaraki</u>	State or Foreign Country <u>Japan</u>	Country of Citizenship <u>Japan</u>
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POST OFFICE ADDRESS <u>c/o ASAHI SOFT DRINKS CO., LTD. Beverage Research &amp; Development Laboratory, 1-21, Midori 1-chome, Moriyashi, Ibaraki, Japan</u>	Number and Street <u>3020106</u>	City	State or Country	Zip Code
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FULL NAME OF INVENTOR 2 <u>Masaaki YASUE</u>	FIRST Name <u>Masaaki</u>	MIDDLE Initial(s)	LAST Name <u>YASUE</u>
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RESIDENCE AND CITIZENSHIP	City <u>Ibaraki</u>	State or Foreign Country <u>Japan</u>	Country of Citizenship <u>Japan</u>
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POST OFFICE ADDRESS <u>c/o ASAHI BREWERIES, LTD. Fundamental Research Laboratory, 1-21, Midori 1-chome, Moriya-shi, Ibaraki, Japan</u>	Number and Street <u>3020106</u>	City	State or Country	Zip Code
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FULL NAME OF INVENTOR 3 <u>Mari YAMAMOTO</u>	FIRST Name <u>Mari</u>	MIDDLE Initial(s)	LAST Name <u>YAMAMOTO</u>
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RESIDENCE AND CITIZENSHIP	City <u>Shizuoka</u>	State or Foreign Country <u>Japan</u>	Country of Citizenship <u>Japan</u>
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POST OFFICE ADDRESS <u>3-16, Asahidai, Kakegawa-shi, Shizuoka, Japan</u>	Number and Street	City	State or Country	Zip Code <u>4360069</u>
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I further declare that all statements made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Hiroshi NAGAI

Date

July 30, 2006.

I further declare that all statements made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Masaaki Yasue

June 6, 2006

Masaaki YASUE

Date

I further declare that all statements made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Mari YAMAMOTO

June 19, 2006

Date

**37 C.F.R. §1.56**  
**Duty to disclose information material to patentability**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: Hiroshi Nagai et al.

SERIAL NO.: unassigned  
(National Phase of PCT Application No. PCT/JP2005/001700)

FILING DATE: herewith

TITLE: Functional Beverage and Composition

EXAMINER: unassigned

ART UNIT: unassigned

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REVISED POWER OF ATTORNEY PRACTICE – 37 CFR 1.32**  
**ASSOCIATION OF CUSTOMER NUMBER**

Please recognize for this application those registered practitioners associated with Customer Number **46,188**.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1698.

Respectfully submitted,  
THELEN REID & PRIEST LLP

Dated: August 4, 2006

  
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Masako Ando  
Ltd. Rec. L0016

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10/588428  
Docket No.: SHOB-0005

IAP11 Reg'd Docket No. SHOB-0005

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